

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2011-050271

02/15/2012

HONORABLE DOUGLAS GERLACH

CLERK OF THE COURT  
C. Vigil  
Deputy

IN RE THE MARRIAGE OF  
PAUL ROBERT WRIGHT

RONEE F STEINER

AND

JENNIFER WRIGHT

CRAIGHTON T BOATES

MINUTE ENTRY

This minute entry is an attempt to make clear the Court's reason for declining to dismiss Respondent's Motion to Set Aside Decree at this time.

To begin, it may be best to state what the Court has not done. The Court has not granted the Motion. Instead, the Court has merely concluded that the Motion states enough so that an evidentiary hearing must be conducted before the Court may rule on the Motion, one way or the other. In doing so, the Court has applied the well-settled standard recognized by Arizona appellate courts.

Initially, a motion to set aside a judgment must state a meritorious defense or claim. Fraud and fraud in the inducement, as asserted here, are such defenses or claims. When determining whether a meritorious defense or claim has been stated sufficiently, courts assume the truth of the facts asserted by the party seeking to set aside a judgment and disregard all contrary evidence presented by the opposing party. In other words, the standard to be applied is the same standard applicable to a motion to dismiss for failure to state a claim. *See Phoenix Airport Travelodge v. Dolgin*, 12 Ariz. App. 358, 360, 470 P.2d 506, 508 (1970) (stating that "[a]

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defense set up in support of [a] motion to set aside a default judgment is sufficient unless such defense would be subject to a general demurrer”); *see also Union Oil Co. v. Hudson Oil Co.*, 131 Ariz. 285, 289, 640 P.2d 847, 851 (1982) (stating that standard for judging the sufficiency of a motion to set aside a default judgment requires the court to assume the truth of the facts asserted in support of the motion).<sup>1</sup>

At this stage, the Court has made no ruling, expressly or implicitly, regarding the merits of the Motion. *See Union Oil Co.*, 131 Ariz. at 289, 640 P.2d at 851 (stating that initial determination regarding the sufficiency of a motion to set aside a default judgment is not a ruling on the merits). The repeated statements of Petitioner’s attorney to the effect that Respondent cannot prove her claim may be true. But the time to make that determination is not now. Indeed, at this stage, the Court is not permitted to consider any of Petitioner’s proof refuting Respondent’s motion. [See authorities cited above] The time for that must wait for an evidentiary hearing, at which Respondent will be required to prove her claim with clear and convincing evidence.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

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<sup>1</sup> Courts in other jurisdictions have recognized the same standard. *E.g.*, *FDIC v. Bruno*, 777 F. Supp. 1432, 1434 (N.D. Ill. 1991) (recognizing that, when determining the sufficiency of a meritorious defense, courts assume the truth of the facts asserted by the party seeking to set aside a judgment and disregard all contrary evidence presented by the opposing party); *see also e.g., Allied Bldg. Prods. Corp. v. Delco Roofing Co.*, 951 F. Supp. 1183, 1191 (E.D. Pa. 1996) (stating that the standard for judging the adequacy of an asserted meritorious claim or defense is “identical to the standard employed in a directed verdict consideration”, and therefore, the court must accept as true the evidence presented by the party seeking to set aside the judgment and all reasonable inferences that can drawn from that evidence (citation and internal quotation marks omitted)); *Martin v. Martin*, 840 S.W.2d 586, 591 (Tex. App. 1992) (stating that a party seeking to set aside a judgment is entitled to an evidentiary hearing merely by showing “that he or she will be entitled to judgment on re-trial *if no contrary evidence is offered*” (italics in original)).